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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,361	07/06/2005	Yoshinobu Sato	37808-0011	3251

65181 7590 12/05/2007

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1796	

MAIL DATE	DELIVERY MODE
12/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/541,361	SATO ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE filed 9/21/07*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 15-24 are pending. Claims 1-14 have been canceled. Applicant's amendment and arguments filed 9/21/07 have been entered.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/21/07 has been entered.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 4/23/07 have been withdrawn:

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to instant claims 16 and 20, the specification, as originally filed, provides no basis for the language "a protonated form of". Thus, this is deemed new matter.

With respect to instant claim 16, the specification, as originally filed, provides no basis for the conditions "if an acidic amino acid" and "if a neutral amino acid". There is nothing in the specification which indicates that a certain equivalents range applies if there is "an acidic amino acid" and a certain equivalents range applies if there is "a neutral amino acid". Thus, this is deemed new matter.

With respect to instant claim 16, the specification, as originally filed, provides no basis for "wherein the amount of alkali in the surfactant is between 1.4 to 2 equivalents relative to the amino acid, if an acidic amino acid, and is between 1.0 to 1.4 equivalents relative to the amino acid if a neutral amino acid". Thus, this is deemed new matter. First, note that, consistent with page 11, lines 10-25 of the instant specification, the claim should read the "amount of alkali salt of an amino acid is between 1.4 to 2 equivalents relative to 2 equivalents of the N-C8-24 acylamino acid... and is between 1.0 to 1.4 equivalents relative to 1 equivalent of N-C8-24 acylamino acid...". Note that,

claims 17-19 and 21-24 have also been rejected due to their dependency on claims 15, 16, and/or 20.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 17, it is vague and indefinite in that it is unclear what is meant by "a-amino acids". Clarification is required. Note that, for purposes of examination and consistent with the specification on page 8, para. 27, "a-amino acids" has been interpreted as "alpha amino acids".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP11-180836, JP11-323380, JP7-331281, or JP11-323378. Note that, a translation of each document has been received and included with this Office action.

'836 teaches a cosmetic, compatible with hair when applied containing 0.01 to 10% by weight of N-acylamino acid wherein the acyl chain contains from 8 to 22 carbon atoms, from 0.001 to 10% by weight of a neutral amino acid such as glycine, and as required, a nonionic surfactant. See Abstract. Specifically, '836 teaches compositions having a pH of 5.2.

'281 teaches a detergent composition containing an N-acylglycine or its salt (preferably having an acyl group of a palm kernel oil fatty acid or an acyl group of a coconut oil fatty acid) and one or more kinds of substances selected from an amino acid and a saccharide. The pH of the composition is from 6.5 to 9. See Abstract.

'380 teaches a solid detergent composition containing one or more N-acylamino acid salts selected from N-acylglycine, N-acylalanine, and N-acylbeta-alanine and one or more selected from acidic amino acids and salts thereof. See Abstract. The pH of the composition is from 5 to 7. See column 1, lines 10-40.

'378 teaches a solid detergent composition containing at least one anionic surfactant selected from salts of N-acylamino acid, salts of acylisethionic acid, and salts

of alkylsulfosuccinic acids; at least one wax; and at least one compound selected from acidic amino acids and salts thereof. The pH of the composition is from 5 to 7. See column 1, lines 20-50.

Note that claim 15 is a product-by process claim; the Examiner asserts that the N-acylamino acid surfactants and amino acid salts contained within the detergent compositions specifically taught by '836, '281, '380, or '378 will mix when used and inherently form the same surfactant as recited by the instant claims. '836, '281, '380, or '378 disclose the claimed invention with sufficient specificity to constitute anticipation.

Note that, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Once a product appearing to be substantially identical is found a 35 USC 102/103 rejection is made, the burden shifts to the applicant to show an unobvious result. See MPEP 2113.

Accordingly, the broad teachings of '836, '281, '380, or '378 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '836, '281, '380, or '378 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to formulate a surfactant

composition having the same properties as recited by the instant claims because '836, '281, '380, or '378 teach that the types and amounts of components added to the composition may be varied.

Claims 23 and 24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP11-180836 or JP7-331281. Note that, a translation of each document has been received and included with this Office action.

'836 and 281 are relied upon as set forth above.

Note that claim 23 is a product-by process claim; the Examiner asserts that the N-acylamino acid surfactants and amino acid salts contained within the detergent compositions specifically taught by '836 or 281 will mix when used and inherently form the same surfactant as recited by the instant claims. '836 or 281 disclose the claimed invention with sufficient specificity to constitute anticipation.

Note that, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product n the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Once a product appearing to be substantially identical is found a 35 USC 102/103 rejection is made, the burden shifts to the applicant to show an unobvious result. See MPEP 2113.

Accordingly, the broad teachings of '836 or '281anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '836 or '281 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to formulate a surfactant composition having the same properties as recited by the instant claims because '836 or '281 teach that the types and amounts of components added to the composition may be varied.

Claims 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagashima et al (US 4,273,684).

Nakashima et al teach a transparent detergent bar possessing good forming power and detergency in hard water which is formulated consisting essentially of at least one salt of a N-long chain acyl-optically active acidic amino acid neutralized with a basic amino acid in the ratio of 1 mol of the former to 1 to 2 mols of the latter and water in the range of 5 to 35% based on the weight of the bar apart from water. Other adjuvants may be present. The pH value of the resultant composition is, for example, 5. See Abstract and column 5, line 40 to column 6, line 40. Nakashima et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Nakashima et al anticipate the material limitations of the instant claims.

Claims 15-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 2000-265191, JP08-003585, or Yoshihara et al (US 5,616,552).

'191 teaches a washing agent that has excellent selective washing function and safety without causing skin roughening and irritation by formulating a specific N-acylalanine salt in the composition. More specifically, '191 teaches a washing agent containing a salt of N-lauroylalanate in an amount of 2 to 30% by weight, another anionic surfactant such as N-acylglutamate salt and an amphoteric surfactant of the carbobetaine type. See Abstract. The counterion of the N-lauroylalanate can be alkali metal salts, a monoethanolamine salt, L-lysine salt, L-arginine salt, etc. Additional anionic surfactants N-acyl methyl taurate, N-acyl isethionic acid salt, N-acyl glycine salt, an alkyl sulfonate, etc. See paras. 7 and 8. Additionally, other components may be used such as thickeners, nonionic surfactants such as saccharides, polyhydric alcohols such as glycerol, diglycerol, 1,3-butylene glycol, polyethylene glycol, hydroxyethylcellulose, perfumes, antiseptics, olive oil, etc. The cleaning agent may be in the shape of a powder, solid, etc. See para. 13.

'585 teaches a detergent composition containing an N-acylalanine salt such as N-lauroyl alanine, a C8-C22 higher fatty acid salt such as sodium laurate, and one or more surfactants. See Abstract. The counterion of the N-acylalanine salt may be sodium, potassium, a lysine, an arginine, etc. See para. 11. Suitable additional surfactants include N-acyl amino acids wherein suitable amino acids include glycine, leucine, glutamic acid, aspartic acid, etc. See paras. 15-19. Additionally, the compositions may contain additional anionic surfactants such as alpha olefin sulfonates, an alkyl sulfonate, alkylbenzene sulfonates, an isethionic acid fatty-acid ester salt, alkyl sulfate, etc. See paras. 20-27. Amphoteric surfactants such as betaines may also be

used in the compositions. See paras. 52-57. Additionally, the compositions may contain other components such as ethylene glycol, propylene glycol, 1,3-butylene glycol; moisturizers such as glycerol, and sorbitol, methyl cellulose, hydroxyethyl cellulose; cationized cellulose, hydrocarbons such as vaseline; cetyl alcohol, etc. The compositions may be in the form of a liquid, paste, solid-state, powdered, etc. See paras. 58 and 59.

Yoshihara et al teach a detergent composition containing N-acylthreonine salt in which the acyl group is a fatty acid residue having 8-22 carbon atoms and higher fatty acid salt having 8 to 22 carbon atoms and also a detergent composition which further contains another surface-active agent. See Abstract. Examples of suitable surface-active agents include anionic surfactants such as N-acylamino carboxylates wherein the acyl group is an acyl residue of a fatty acid having 8 to 22 carbon atoms, the amino acids may be glutamic acid, alanine, etc., and the counterion may be sodium, potassium, lysine, arginine, etc. Other anionic surfactants include sulfonate-type, sulfate-type, etc. Additional surfactants include cationic surfactants, nonionic surfactants, and amphoteric surfactants. See column 3, line 5 to column 4, line 65. There is no particular limit in terms of the form of the detergent in the detergent composition and any of the forms of liquid paste, gel, solid, powder, etc., may be adopted.

Other components may also be added to the compositions including polyhydric alcohols such as diglycerol, diethylene glycol, ethylene glycol, etc.; polymers such as methyl cellulose, hydroxyethylcellulose, nitrocellulose, polyvinyl alcohol, crystalline

cellulose, silicone oils, chitin, inorganic salts, chelating agents such as ethylene diamine tetraacetic acid, citric acid, etc. See column 7, line 35 to column 8, line 55.

Note that claim 15 is a product-by process claim; the Examiner asserts that the N-acylamino acid surfactants as specifically by '191, '585, and Yoshihara et al would inherently have the same properties as the surfactants recited by the instant claims because '191, '585, and Yoshihara et al teach surfactants containing the same N-acylamino acid and same counteranion as recited by the instant claims. '191, 585, or Yoshihara et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Note that, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Once a product appearing to be substantially identical is found a 35 USC 102/103 rejection is made, the burden shifts to the applicant to show an unobvious result. See MPEP 2113.

Accordingly, the broad teachings of '191, '585, or Yoshihara et al anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '191, '585, or Yoshihara et al are not sufficient to anticipate the material limitations of the instant claims, it would have been

nonetheless obvious to one of ordinary skill in the art to formulate a surfactant composition having the same properties as recited by the instant claims because '191, '585, or Yoshihara et al teach that the types and amounts of required components added to the composition may be varied.

Response to Arguments

With respect to new claim 24, Applicant states that the language "an essential surfactant" has been added with respect to the ion-pair surfactant as recited by instant claim15. Further, Applicant states that in interpreting this limitation, it is clear that from the context of the specification that the surfactant properties arise essentially from this component and other additions made in smaller amounts do not essentially alter this property. Additionally, Applicant goes on to cite examples of the term "essential surfactant" in the prior art. In response, note that, the Examiner maintains that the term "essential surfactant", based on the teachings of the surfactant in the instant specification and the Examples of the prior art containing this term as cited by Applicant, should simply be interpreted to mean that the ion pair surfactant is an essential (i.e, required) and not optional component of the composition as recited by instant claim 24. Further, the Examiner asserts that while surfactant properties would obviously arise from the required ion-pair surfactant as recited by the instant claims, the instant claims recite "comprising" which would not exclude the presence of other surfactant materials which could also contribute surfactant properties to the composition.

With respect to the language "if an acidic amino acid" and "if a neutral amino acid" as recited by instant claim 16, Applicant states that this language is amply

supported by the instant specification. In response, note that, while the specification does state that the amino acids may be neutral or acidic, the Examiner asserts that the specification does not provide basis for the conditions that if there is a particular number of equivalents, the amino acid is then acidic or basic. For example, while the specification does provide basis for the amino acid having two carboxylic groups, this does not establish a specific requirement that the amount of alkali salt of the amino acid relative the to the acylamino acid is from 1.4 to 2 equivalents, if the amino acid is generally acidic. Thus, as stated above, this language has been deemed new matter. With respect '261, '380, '836, '378, or Nagashima et al, while not specifically mentioning these references, Applicant appears to state that there are insufficient non-amino acid counter ions in solution in these references. Further, Applicant states that the claimed invention, on the other hand, concerns a specific cation of the long chain acyl amino acid with an anion of the other, otherwise no good lathering results. In response, note that, as stated previously, the Examiner maintains that the instant claims simply require an ion-pair surfactant salt of an acylamino acid and alkali salt of an amino acid which is formed by blending the two components together (See para. 50 of the instant specification. Further, the Examiner maintains that '261, '380, '378, '836 or Nagashima et al teach blending an acylamino acid and alkali salt of an amino acid, which is the same as recited by the instant claims, and that an ion pair surfactant would inherently form from such a mixture of the two components. Applicant has provided no evidence or data to show that the compositions taught by the prior art are any different from the compositions recited by the instant claims and thus, the rejection of the claims under 35

USC 102 has been maintained. There has been no comparison made to the closest prior art of record.

Additionally, since Applicant has not overcome the rejection of the instant claims under 35 USC 102, any showing unexpected and superior properties of the claimed invention would not be persuasive since such evidence is not sufficient to overcome any rejection under 35 USC 102. Alternatively, even if the prior art is not sufficient to anticipate the instant claims under 35 USC 102, which the Examiner is clearly not conceding, the Examiner maintains, as stated previously, that Applicant has not pointed specifically or clearly as to which data is being relied upon and how this data shows the unexpected and superior properties of the claimed invention in comparison to compositions falling outside the scope of the instant claims. Further, note that, a new grounds of rejection has also been made as set forth above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1796

GRD
November 28, 2007